

IN THE MATTER OF the Ontario Human Rights Code, R.S.O. 1980, c. 340, as amended;

AND IN THE MATTER OF a Complaint dated November 31, 1983 by John Kellerman of Toronto, Ontario, alleging discrimination in denial of services by Al's Restaurant and Tavern Limited, its Servants and Agents, 174 Queen Street West, Toronto, and by its owner, George Zarafonitis;

AND IN THE MATTER OF a Board of Inquiry appointed to hear and decide the Complaint.

BOARD OF INQUIRY: M.L. Friedland, Q.C.

APPEARANCES: Bella Fox, Counsel for the Ontario Human Rights Commission and John Kellerman

B. Barry Swadron, Q.C., Counsel for Al's Restaurant and Tavern Ltd. and George Zarafonitis

Hearings in the above matters were held in Toronto on May 5 and 6, 1986.



Digitized by the Internet Archive
in 2013

<http://archive.org/details/boi240>

DECISION

John Kellerman has cerebral palsy, a condition which severely impairs his physical movements and his speech. He alleges that on October 28, 1983 he was denied equal treatment with respect to services by Al's Restaurant and Tavern Ltd. and by its owner, George Zarafonitis, because of his physical handicap.

I was appointed on October 28, 1985 as a Board of Inquiry to hear and decide the complaint. Hearings were held in this case on May 5 and 6, 1986. The question for this Inquiry is whether Al's Restaurant and Tavern Ltd. and George Zarafonitis infringed John Kellerman's right to "equal treatment with respect to services."

Section 1 of the Ontario Human Rights Code, 1981 states that "Every person has a right to equal treatment with respect to services ... without discrimination because of ... handicap." Section 8 of the Code provides that "No person shall infringe or do, directly or indirectly, anything that infringes a right under [section 1]." Discrimination because of handicap first became a ground of complaint when the new Human Rights Code came into operation in June, 1982.

Mr. Kellerman gave evidence that he drove his motorized wheelchair to Al's Restaurant, at the corner of Queen St. W. and Simcoe Street in Toronto, was then assisted into the restaurant by some customers, and was seated at a booth at the front of the restaurant. He ordered a hamburger, a glass of milk and a glass of white wine. He subsequently received the hamburger and milk, but not the wine. Before he had finished his meal he was, he said, "roughly" escorted out of the restaurant by the owner, George Zarafonitis. His evidence was generally supported by the waitress who had served him. (She left the restaurant several months after the incident for a better

job.) Mr. Kellerman complains that he was discriminated against in two respects: in being removed from the restaurant and in not being served wine.

Mr. Zarafonitis, on the other hand, denies that there was any discrimination. He has been at that same location for 24 years, serving persons from all nationalities and backgrounds as well as serving persons with physical handicaps. He appeared to me to be a very decent, hard-working restauranteur. He testified that he observed Mr. Kellerman coming into the restaurant and thought that he was intoxicated. He told the waitress not to serve him wine because of his apparent intoxication. When Mr. Kellerman had finished his meal, Mr. Zarafonitis says that he gently assisted him out of the restaurant. Mr. Zarafonitis' evidence was to some extent supported by several patrons of the restaurant who gave their evidence in a truthful manner, but who were not always in a position to observe precisely what was taking place.

I have concluded that Mr. Kellerman was discriminated against in being escorted out of the restaurant before he wished to leave. He had only been there about half an hour and much of that time had been taken up in waiting to be served. Because of his condition, Mr. Kellerman necessarily ate in a messy manner. Mr. Zarafonitis testified that there was a mess, "some on the table, some under the table." It was probably for this reason and in order not to upset his other customers that Mr. Zarafonitis wanted him to leave the restaurant as quickly as possible. I believe that Mr. Kellerman was forced to leave the restaurant before he was finished and that Mr. Zarafonitis made him leave in a very firm and determined manner, against Mr. Kellerman's will. If Mr. Kellerman had not been handicapped he would

not have been forced to leave at that time. This, then, is a denial of equal service because of his handicap.

I have also concluded that because he was not served the wine he had ordered Mr. Kellerman was denied equal service because of his handicap. He was clearly not intoxicated. He had spent the morning at the Human Rights Commission discussing other matters with Mr. Fred Reuter, an officer of the Commission. Mr. Reuter saw him when he left the Commission, shortly before he arrived at Al's Restaurant. At the time, Mr. Kellerman appeared to Mr. Reuter to be his normal self.

It is unfair to persons in John Kellerman's position for tavern operators to judge a person's condition from afar. Mr. Zarafonitis was behind the bar, some distance from Mr. Kellerman, when he assessed his condition. Mr. Zarafonitis testified: "I just look over, you know, the way he look, I thought he was drunk." He did not take further steps to ascertain whether his suspicions were justified. Mr. Zarafonitis was therefore negligent in judging that Mr. Kellerman was intoxicated or apparently in an intoxicated condition. Those serving liquor should be aware of the problems faced by persons with handicaps like Mr. Kellerman's and should be aware that their initial impression may not be the correct one. Although the Liquor Licence Act of Ontario (R.S.O. 1980, c. 244, s. 43) makes it an offence to "sell or supply liquor ... to any person in or apparently in an intoxicated condition", this provision must be interpreted in the light of the Human Rights Code which provides (s. 46(2)) that "Where a provision in an Act or regulation purports to require or authorize conduct that is a contravention of Part I, this Act

applies and prevails unless the Act or regulation specifically provides that it is to apply notwithstanding this Act."

What is the appropriate remedy? Mr. Kellerman testified that he was "extremely enraged" by what had happened. He claimed that his "integrity was damaged" and that he was "tired of being pushed around". I believe that this was Mr. Kellerman's true reaction. The respondents suggested that Mr. Kellerman was making a "business" out of complaints under the Human Rights Code. I allowed the respondents' counsel to cross-examine Mr. Fred Reuter, from the Commission, concerning Mr. Kellerman's previous activities in relation to the Code. I did not allow identification of specific cases and did not allow the respondents' counsel to examine the Commission's files, as he wished to do, but I did permit questions involving patterns of activity. In not one of the over 20 complaints filed by Mr. Kellerman under the Code was there evidence that he received financial compensation. The most that he received was a \$20 meal voucher. The respondent's allegation is, therefore, an unfair one. Far from showing that Mr. Kellerman was making a "business" out of the Human Rights Code, it proved to me that an article introduced into evidence headed "Crusader for the Rights of the Handicapped", written about Mr. Kellerman in the September 1985 issue of Affirmation, published by the Ontario Human Rights Commission, was an accurate assessment of Mr. Kellerman.

Taking into account all of the circumstances, I award Mr. Kellerman the sum of \$500 (including interest) for his hurt feelings and damaged integrity.

Dated at the City of Toronto in the County of York this 3rd day of
June, 1986.

M. L. Friedland

Martin L. Friedland, Q.C.
Chairman, Board of Inquiry

IN THE MATTER OF the Ontario Human Rights Code, R.S.O. 1980, c. 340, as amended;

AND IN THE MATTER OF a Complaint dated November 31, 1983 by John Kellerman of Toronto, Ontario, alleging discrimination in denial of services by Al's Restaurant and Tavern Limited, its Servants and Agents, 174 Queen Street West, Toronto, and by its owner, George Zarafonitis;

AND IN THE MATTER OF a Board of Inquiry appointed to hear and decide the Complaint.

ORDER

This matter coming on for hearing on May 5 and 6, 1986, before this Board of Inquiry, pursuant to my Appointment by the Honourable William Wrye, Minister of Labour, dated October 28, 1985, in the presence of Counsel for the Ontario Human Rights Commission and Counsel for Al's Restaurant and Tavern Ltd. and George Zarafonitis, the Respondents, upon hearing the evidence adduced by the parties and what was alleged by the parties and upon the finding of this Board, that the Respondents discriminated against the Complainant in respect of services because of his handicap:

It is ordered that Al's Restaurant and Tavern Ltd. and its owner, George Zarafonitis, are jointly and severally liable to Mr. John Kellerman for the sum of \$500 (including interest).

Dated this 3rd day of June, 1986.



Martin L. Friedland, Q.C.
Chairman, Board of Inquiry

